



WE CALL THIS MEETING TO ORDER

How the Open Public Meetings Act evolved during the pandemic and how to comply now

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ENACTED IN 1971, Washington's Open Public Meetings Act (OPMA) has seen some updates over the past five decades—but none so significant as the changes made during the last two years. With in-person meetings largely off the table during the COVID-19 pandemic, and governments trying to figure out how to make Zoom work for them, it was time for the OPMA to break into the 21st century. Let's look at where cities sit in 2023.

Where We've Been

In March 2020, less than one month after declaring a state of emergency due to COVID-19, Governor Inslee issued Proclamation 20-28, waiving and suspending the OPMA's rules. Remote public meetings were mandated and any existing requirements for in-person contact were waived. These restrictions relaxed over time, allowing cities the option to hold in-person meetings if certain conditions were met (such as applicable masking requirements).

In March 2022, the governor signed En-grossed Substitute House Bill (ESHB) 1329, enacting more permanent changes to the OPMA. Most of the changes took effect on June 9, 2022, with a few that became effective immediately. So where are we now?

Physical Location Required for Most Meetings

During the pandemic, remote meetings were required, even if a city had reinstated an in-person option when restrictions relaxed. Now, however, a physical location is required. Cities no longer have to offer a remote option for attendance but are still encouraged to do so. Many cities continue to use a hybrid meeting approach.

There is an exception to the physical location requirement for emergencies, which under the updated OPMA includes when a city cannot safely hold an in-person meeting. This will allow for greater consideration of public health emergencies than the OPMA previously recognized. Another



Key OPMA Revisions at a Glance

What follows are central changes to the Open Public Meetings Act from house bill 1329:

- Requiring a physical location for most meetings
- Allowing council members to attend meetings remotely
- Further limiting the exceptions to the online posting of agendas and notices
- Encouraging audio/video recording of meetings and online posting
- Requiring public comment at regular meetings
- Requiring meeting minutes to include executive session purposes
- Many areas of revision have exceptions and quirks, and all cities are advised to understand how their policies might be affected by the changes. Remember that the OPMA can apply beyond your city council, such as to city committees or commissions that include a quorum of the council.

exception—for governing bodies that held regular remote meetings prior to March 1, 2020—applies to only a few small public agencies.

Governing Bodies Need Not Attend Physically

While meetings must have a physical location for the public, the OPMA now expressly permits remote attendance of governing body members, even absent an emergency. Remote access must allow for real-time verbal communication. Consider what policies your city may want to enact, or amend, regarding remote attendance of city council members.

Online Posting of Agendas and Special Meetings Notices

The OPMA requires that cities post their regular meeting agendas at least 24 hours in advance. Originally, cities that did not have websites, or had fewer than 10 full-time employees, were exempt from this requirement. Under ESHB 1329, this exception became much stricter. Now a city may only opt out of posting the agenda if certain requirements are met regarding property tax base, population, and budget.

ESHB 1329 also narrowed the exception to posting special meeting notices online at least 24 hours in advance, but many cities must have a website to comply with the posting requirement for regular meetings. If that is a challenge for your city, the revised OPMA expressly permits an agency to share a website with, or have its website hosted by another public agency.

Recording of Meetings

The updated OPMA encourages, but still does not require, cities to record their regular meetings by audio or video and make the recordings available online for at least six months. Many cities already post recordings indefinitely, along with meeting

agendas and minutes, which reduces public records requests for those items.

Public Comment Required at Regular Meetings

The OPMA now requires acceptance of public comment at any regular meeting where final action is taken—which is likely most, if not all, of your city’s regular meetings. Public comments can be written rather than oral, and a city can set reasonable deadlines for accepting written comments. Any written comments received must be distributed to the governing body. The new legislation does not specify when during the meeting oral comments must occur, but there must be an option for remote comments if requested and where feasible. Public comment is not required during emergencies or for special meetings, but offering the option is recommended.

Cities can still impose reasonable regulations on meeting conduct. This is usually

best accomplished with adopted rules of procedure and conduct for meetings, which can be enforced on the public as well as members of the governing body. However, cities should be mindful of First Amendment considerations. Limiting comments to a particular subject matter (assuming those limits are viewpoint-neutral) is likely permissible, but consider whether other opportunities are being provided for general public comment. Cities should not physically remove a member of the public or disconnect a remote participant unless the person is actually disrupting the meeting—a high threshold. It is, however, acceptable to mute a remote participant when appropriate, such as if a commenter is past the allotted comment time, preferably following a warning.

Executive Session Purpose and Notice of Adjournment

It is now expressly required that a city include the purpose of executive sessions in its meeting minutes. Many cities already do this, but the OPMA did not previously require it. The OPMA also requires posting a notice of adjournment conspicuously on or near the door of the meeting location, but the new legislation clarifies that this is not required for fully remote meetings.

Next Steps

Examine each of these changes to the OPMA and ensure your city complies. Consult with knowledgeable legal counsel as needed to assist with updating the city’s policies or practices to align with the recent updates.

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